REMARKS

Claims 1-4, 6-8, 10-16 and 25-29 are pending in the above-referenced application. Claim 30 has been added to recite specific intron sequences and claim 31 has been added to recite the elected species.

Applicant would like to thank Examiner J. Zara for her time and most helpful suggestions during her interview with Applicant's representative, Cheryl H. Agris on December 18, 2007. A number of topics were discussed: (1) the restriction requirement; (2) prior art and (3) possible amendments of claims 1 and 8.

As noted above and as discussed during the interview, claims 12-13 and 23-24 have been canceled. However, Applicant reserve the right to file subsequent continuation and/or divisional applications on canceled subject matter. Claims 23-29 have been withdrawn from consideration. However, as discussed during the inteview, Applicant asserts that upon indication of allowable subject matter, claims 23-29 would be subject to rejoinder in view of MPEP 821.04(b).

Further, as discussed during the interview, claim 1 has been amended to recite that the claimed nucleic acid sequence **consists** of either:

(a) a nucleic acid molecule of SEQ ID NO:8 which includes sequence encoding a polypeptide that has human adipocyte enhancer binding protein 1 activity;

(b) a fragment of (a) comprising at least nucleotides 1301-10893 of SEQ ID NO:8 which encodes a polypeptide having human adipocyte enhancer binding protein 1 activity or

(c) a nucleic acid molecule which is a complement of the polynucleotides specified in (a)-(b).

Amended claim 1 is supported by the specification at Table 2 and page 20, lines 22-30 (of substitute specification-see above).

Claim 8 has been amended to be directed to a nucleic acid molecule consisting of a fragment of the nucleic acid molecule of claim 1 , said fragment comprising at least 20 contiguous nucleotides identical to an intron region of SEQ ID NO:8. Amended claim 8 is supported by the specification (e.g., page 31, lines 7-12 (see substitute specification)).

1. The Rejection Under 35 USC 102

The claims were rejected over Sulston et al. and Venter et al. Both are discussed below.

1.1 Sulston et al.

Claims 1, 4, 6, 8, 10, 11, 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Sulston et al (Genome Res. Vol. 8, No. 11, pages 1097-1 108, 1998). The Office Action specifically states

> Sulston et al teach recombinant host cells and compositions comprising a plurality of nucleic acid molecules including an isolated genomic nucleic acid construct comprising all or at least a 20 nucleotide fragment of nucleotides 9015-10,641 of SEQ ID No. 8 and the complement thereof, which is optionally expressed in an appropriate host cell and which composition further comprises a carrier, and which polynucleotide is optionally labeled with a detectable substance (e.g. for sequencing the genome) (see entire document, see also alignment of sequences between SEQ ID NO. 8 and Pub Med No. 9847074 of Sulston et al).

Applicant respectfully traverses the rejection. Before discussing the rejection, Applicant points out that in order to advance prosecution and to more distinctly claim the invention, claim 1 has been amended to recite that the claimed sequence is an isolated sequence selected from the group consisting of:

(a) a nucleic acid molecule of SEQ ID NO:8 which includes sequence encoding a polypeptide that has human adipocyte enhancer binding protein 1 activity;

(b) a fragment of (a) comprising at least nucleotides 1301-10893 of SEQ ID NO:8 which encodes a polypeptide having human adipocyte enhancer binding protein 1 activity and

(c) a nucleic acid molecule which is a complement of the polynucleotides specified in (a)-(b).

Applicant respectfully points out that Sulston et al. provided by the Examiner would not be prior art. The priority date of the instant application is September 21, 2000. Sulston et al. was published September 30, 2000. Sulston et al. does refer to a prior submission dated

March 5, 1999. A copy is submitted herewith and listed on an Information Disclosure Statements submitted herewith. In the 1999 submission the relevant clone was in four unordered pieces. SEQ ID NO:8 is not contained within a single piece of the four unordered pieces of AC006454.2. Thus claim 1 as amended is not anticipated by Sulston et al. It would also follow that claims 2-4, 6 and 10 depend from claim 1. Thus, arguments made with respect to claim 1 would apply to claims 2-4, 6 and 10 as well.

Similarly, claim 8 has been amended to recite that it is a nucleic acid molecule **consisting of a fragment of the nucleic acid molecule of claim 1**, said fragment comprising at least 20 contiguous nucleotides identical to an intron region of SEQ ID NO:8. Thus, given that the nucleic acid molecule of claim is not anticipated by Sulston, it would follow that a fragment would not be anticipated either. Claims 11, 14-16 depend from claim 8; thus arguments made with respect to claim 8 would apply to claims 11, 14-16 as well.

In view of the amendment of claims 1 and 8 and the above arguments, Applicant asserts that the rejection of claims 1, 4, 6, 8, 10, 11, 14-16 over Sulston et al. have been overcome. Therefore, Applicant respectfully requests that the rejection be withdrawn.

1.2 The Rejection Over Venter et al.

Claims 1-4,6, 8, 10, 11, 14-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Venter et al (USPN 6,812,339). The Office Action specifically asserts:

> Venter et al teach recombinant host cells and compositions comprising a plurality of nucleic acid molecules including an isolated genomic nucleic acid construct comprising all or at least a 20 nucleotide fragment of nucleotides 9015-10,641 of SEQ ID No. 8 and the complement thereof, which is optionally expressed in an appropriate host cell and which composition further comprises a carrier, and which polynucleotide is optionally labeled with a detectable substance (e.g. for sequencing the genome) (see SEQ ID No. 14,464 of Venter et al).

Applicant respectfully traverses the rejection. It is Applicant's view that Venter would not be prior art. The priority date of Venter is actually September 8, 2000. Applicant submits herewith the provisional application (appln ser. no. 60/231,498 filed September 8, 2000) and Tables 1-25 accompanying said application. This application and tables are made of record in the accompanying Information Disclosure Statement. SEQ ID NO: 14,464 is not disclosed in

the appln. Ser. no. 60/231,498 or in Tables 1-25. The other applications filed, provisional applns. 60/241,755, 60/237,768, 60/231,498 were filed after the priority date of September 21, 2000. Even assuming *arguendo* that Venter is prior art, the claimed invention would not be anticipated by Venter. As noted above, claim 1 has been amended to recite that the claimed nucleic acid sequence **consists** of either:

(a) a nucleic acid molecule of SEQ ID NO:8 which includes sequence encoding a polypeptide that has human adipocyte enhancer binding protein 1 activity;

(b) a fragment of (a) comprising at least nucleotides 1301-10893 of SEQ ID NO:8 which encodes a polypeptide having human adipocyte enhancer binding protein 1 activity or

(c) a nucleic acid molecule which is a complement of the polynucleotides specified in (a)-(b).

There is no teaching of such an isolated nucleic acid molecule in Venter. Claim 8 is directed to a fragment of claim 1. Thus claim 8 would not be anticipated by claim 1 either. The other claims either depend from claims 1 or claim 8. As noted above, claims 2-4, 6 and 10 depend from claim 1. Further, claims 11, 14-16 depend from claim 8; thus arguments made with respect to claim 8 would apply to claims 11, 14-16 as well.

In view of the above arguments, Applicant asserts that the rejection of the claims over Venter et al. has been overcome. Therefore, Applicant respectfully requests that the rejection be withdrawn.

2. **Conclusion**

In view of the foregoing, Applicants assert that the claims are now in condition for allowance. Early action to that end is respectfully requested. The Examiner is invited to contact the undersigned at (914) 712-0093 if he has any questions.

Respectfully submitted,

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